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C O N F I D E N T I A L THE HAGUE 000556

DEPARTMENT FOR S/WCI - WILLIAMSON/SHIN/LAVINE/VIBUL,
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TAGS: ICTY SR BK HR KAWC PREL

SUBJECT: ICTY: WITNESS TROUBLES AT THE SESELJ TRIAL

REF: THE HAGUE 0081

Classified By: Legal Counselor Heather A. Schildge, Reasons 1.4 (c) and (d).

¶1. (C) Summary. The Seselj trial at the International Criminal Tribunal for the Former Yugoslavia (ICTY) is behind schedule and witness issues threaten to slow it further. Office of the Prosecutor (OTP) Senior Trial Attorney (STA) Daryl Mundis claims to have evidence that Vojislav Seselj's supporters, perhaps even his legal advisors, have threatened OTP witnesses, including a US-based witness. Seselj claims the OTP's witnesses freely chose to be Defense witnesses. One of these witnesses, Lubisa Petkovic, was Seselj's deputy during the war and awaits trial for contempt of court after he failed to appear as a Trial Chamber witness. The Trial Chamber will be hard pressed to investigate claims of witness intimidation and still sustain the delicate and distasteful balance that keeps the Seselj trial in motion. End Summary.

¶2. (U) Slow Progress. Allocating hours to the parties at the start of the Seselj trial in November 2007, the Trial Chamber estimated the case would take 18 months, and projected that the OTP would conclude its case shortly after the ICTY's 2008 summer break. In May, Presiding Judge Antonetti observed that the OTP had consumed half of its allotted time, but presented only around one third of its witnesses. On June 19, he directed the OTP to wrap up by the end of 2008, and made a vague reference to the trial concluding in 2009. Frustrated by the Trial Chamber's pressure on the OTP to cut time while the Chamber itself rejected time-saving measures, Mundis replied that the OTP would ask for substantially more time should the Trial Chamber require live testimony from all remaining witnesses. In response, Antonetti advised the OTP that the Trial Chamber was considering issuing decisions regarding the time remaining for the OTP to present its case, suggesting that it may cut the OTP's time.

¶3. (C) OTP Claims Defense Pressuring Witnesses. Also on June 19, Vojislav Seselj, who is self-representing, asked that the Chamber prevent the OTP from calling witnesses who have said they want to be Defense, and not OTP, witnesses. Signaling support for Seselj's request, Antonetti commented to STA Mundis that the OTP would no longer need the time allotted for witnesses who would instead testify for Defense. Mundis urged the Trial Chamber to delay making such a decision, asserting that these witnesses were pressured into agreeing to be Defense witnesses. Mundis then announced that the Prosecution intended to file a motion with the Trial Chamber regarding witness intimidation on 27 June and would request that the Trial Chamber appoint counsel for Seselj. In a private conversation with Emboff, Mundis said Seselj's legal advisors are associated with a campaign of intimidation

against at least a dozen Serbia-based insider witnesses who had agreed to testify for the OTP. He said that many of these witnesses asked the OTP to subpoena their testimony, as they feared openly supporting the OTP by voluntarily appearing.

¶4. (C) Intimidation Evidence. OTP Deputy Chief of Trials Division, Bob Reid, told Emboff that there is clear evidence of attempted intimidation of three witnesses. One of these witnesses, Isak Gasi, resides in the U.S. According to Reid, Gasi reported that a Serbian friend in Belgrade, Mirko Nisovic, was being pressured to convince Gasi to not testify against Seselj. Nisovic told Gasi that Seselj's "associates" threatened to destroy Nisovic's restaurant if Gasi testified. Gasi forwarded a letter to the OTP that Nisovic supposedly believed to have been drafted by Seselj's legal advisors for Gasi to sign and return. The letter included a statement that Gasi would only appear for Defense. According to Reid, two other witnesses provided the OTP with copies of similar letters, each claiming to be facing pressure to not testify. According to Reid, Gasi, a former Olympic kayaker, is tough and remains committed to testifying.

¶5. (SBU) Trial Chamber Twist. One former OTP witness, Lubisa Petkovic, was Seselj's deputy in the Serbian Radical Party during the period of the Seselj indictment. Upon receiving Petkovic's notice in April that he wanted to be a Defense rather than OTP witness, the Trial Chamber requested via confidential subpoena that Petkovic appear instead as a Chamber witness. After Petkovic failed to appear as ordered, the Trial Chamber issued an order in lieu of an indictment for contempt of court and a warrant for his arrest. The Trial Chamber lifted confidentiality over these matters once Serbia transferred Petkovic to the ICTY on May 28. Petkovic entered a "Not Guilty" plea when he made his initial appearance on 29 May. Petkovic asked for Serbian-speaking legal representation, which Registry hoped to secure by the end of June. The Trial Chamber will schedule the next hearing once Petkovic has accepted legal representation.

¶6. (U) Seselj's Edge. Since January, Seselj has actively participated in the trial process, and is almost respectful of the Trial Chamber. However, Seselj shows little regard for witnesses, regularly labeling testimony as a lie. At least two witnesses addressed remarks to the Trial Chamber regarding Seselj's harsh treatment of them. While the Bench frequently advised Seselj against using such intimidating tactics, it has not directly confronted Seselj. The Trial Chamber instead reigned in some of Seselj's excesses by modifying procedures that apply to both parties. The Trial Chamber recently began deducting from Seselj's allotted cross-examination time when Seselj disrupts the Prosecution's presentation with matters he should raise during cross-examination. This has cut Seselj's interruptions, but not influenced his abrasive tone.

¶7. (C) Comments. Although witness intimidation has been alleged in numerous ICTY trials, the Trial Chambers rarely receive the concrete evidence that would allow them to address the issue directly. Should the OTP present the Trial Chamber with compelling evidence of witness intimidation in the Seselj case, the Trial Chamber is likely to handle the matter confidentially and seek to buy time, as it is poorly positioned to confront the issue head on. Antonetti's strategy has been to obtain Seselj's cooperation through acceding to most of his demands and seeking to flatter him. While this has enabled the trial to progress significantly, there remains an unspoken threat that Seselj may stop participating in the proceedings, as he did during his 2006 hunger strike. Given the impact of witness intimidation on the judicial process, it is hard to see how the Trial Chamber could avoid confronting Seselj should it be presented with compelling evidence of such behavior. The consequences of such a confrontation, however, are highly unpredictable.